

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07CV31 HEA
)	
DEWEY C. JOHNSTON,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation, [Doc. No. 40], of United States Magistrate Judge Frederick R. Buckles, pursuant to 28 U.S.C. § 636(b), in which Judge Buckles recommends that Defendant's Motion to Suppress Statements, [Doc. No. 20], be denied. Defendant has filed Objections to the Report and Recommendation.

When a party objects to a magistrate judge's report and recommendation, the Court must conduct a *de novo* review of the portions of the report, findings, or recommendations to which the party objected. See *United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir.2003) (citing 28 U.S.C. § 636(b)(1)). This includes a *de novo* review of the magistrate's findings of fact, including any credibility determinations. *Id.* The court has reviewed the entire record, including listening to the audio recordings of the hearing held on October 30, 2007.

Defendant objects to Judge Buckles' Report and Recommendation and relies on his previously filed Motion and Memorandum in support thereof. Defendant contends that any oral or written statements were involuntary, were elicited by coercion, and/or were elicited without Defendant being fully advised of and afforded his rights under the Fifth Amendment of the United States Constitution, and that the statements are therefore involuntary and inadmissible.

The Court, without reservation or qualification, agrees with Judge Buckles' findings and conclusions and finds that Defendant was properly advised of his *Miranda* rights. Defendant sent a message to Deputy Ourth that he wanted to talk with Ourth. Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), Deputy Ourth advised Defendant of his constitutional rights to remain silent and to counsel. Deputy Ourth presented Defendant with a written form containing these rights. Defendant signed this form.

The record reveals that the statements made by Defendant thereafter were voluntary: they were not the result of coercion, intimidation on the part of Deputy Ourth, nor were they made as a result of any promises given to Defendant. *See Colorado v. Connelly*, 479 U.S. 157, 169-70 (1986); *United States v. Goudreau*, 854 F.2d 1097, 1099 (8th Cir. 1988). Defendant appeared lucid and coherent. His answers were responsive to the questions asked.

This Court has conducted a *de novo* review of those portions of the Report

and Recommendation to which Defendant objects. The Court has reviewed the pleadings motions and memoranda presented. The Court has further listened to the testimony and arguments of counsel presented to Judge Buckles on October 30, 2007. Judge Buckles presents a very thorough analysis of the applicable law, to which this Court finds no need for amplification. Defendant's objections to Judge Buckles' conclusions of law that Defendant was properly advised of his rights and voluntarily made the statements at issue are overruled. The Court will adopt the Recommendation of Judge Buckles that the Motion to Suppress Statements be denied.

Accordingly,

IT IS HEREBY ORDERED, that Defendant's Motion to Suppress Statements, [Doc. No. 20], is denied.

Dated this 26th day of December, 2007.

A handwritten signature in black ink, reading "Henry Edward Autrey", with a long horizontal flourish extending to the right.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE